

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of

Request for Waiver of the Rules

Stanly County School District  
Albemarle, North Carolina

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) CC Docket No. 02-6  
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) File No. SLD Form 471 No. 794048  
) FRN 2182233  
) FY 2011  
)

To: Chief, Wireline Competition Bureau

**PETITION FOR RECONSIDERATION**

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Consultant to Stanly County School District

Dated: June 29, 2015

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## SUMMARY

Stanly County Schools (“Stanly County” or “District”), a small rural school district in North Carolina, requested a waiver of the BEAR invoicing deadline for over \$300,000 in approved E-Rate Program Support for Funding Year 2011 (“Request”). The District based its Request on the fact that the SPI process was traditionally used by its vendors and the unexpected illness of its IT Director prevented the timely filing of the BEAR form.

The Commission, by Public Notice, denied the Request on the grounds that the County had failed to demonstrate that these circumstances, including the IT Director’s illness, met the “extraordinary circumstances” test for invoicing deadline waivers established in the 2014 *E-Rate Modernization Order*, although the Commission did not specifically define the parameters of that test therein.

However, the Commission applied the wrong standard because the Request was for Funding Year 2011 and was filed less than 12 months after the missed invoicing deadline. The circumstances in this case meet the requirements for waiver set forth in the *Canon-McMillan Order*, which is the standard that should have been applied.

Furthermore, Stanly County respectfully submits that the circumstances here should be considered “extraordinary” and the waiver can be granted even under that test.

For all these reasons Stanly County seeks reconsideration of the Commission’s decision denying the Request.

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To: Chief, Wireline Competition Bureau

**PETITION FOR RECONSIDERATION**

This Petition For Reconsideration ("Petition") is filed on behalf of Stanly County School District of Albemarle, North Carolina ("Stanly County" or "District"). On January 20, 2016, the County timely filed, in accordance with Sections 54.719-54.721 of the Federal Communication Commission's ("FCC" or "Commission") rules, a "Request for Waiver of the Rules" ("Request") to extend the time for invoicing for services received pursuant to the captioned Funding Request Number ("FRN") under the Schools and Libraries Support Mechanism ("E-Rate Program" or "Program") for Funding Year ("FY") 2011.<sup>1</sup> On May 31, 2016, the Commission summarily denied the Request.<sup>2</sup> In accordance with the Notice and Section 1.106 of the Commission's rules, the District seeks reconsideration of that denial by this Petition.

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<sup>1</sup> A copy of the Request is Exhibit 1 hereto.

<sup>2</sup> FCC Public Notice, "Streamlined Resolution Of Requests Related To Actions By The Universal Service Company," DA 16-600, released May 31, 2015, at p. 8 ("Notice").

## **I. INTRODUCTION**

Stanly County submits that the Commission applied the wrong standard in denying its Request. The Commission should have assessed whether the Request was made in good faith and within a reasonable time period after the services were provided, not the extraordinary circumstances standard. Under the foregoing standard, as applied in the *Canon-McMillan School District* decision,<sup>3</sup> Stanly has demonstrated good cause for waiving the rules and allowing it to submit the invoices and therefore the Commission should reconsider its denial of the Request.

However, even if the extraordinary circumstances test were to be applied, the circumstances here justify reconsideration and grant of the District's waiver request. This was an unexpected and unplanned serious illness by the sole person assigned to manage the E-Rate process, along with other responsibilities, in this small rural school District.

## **II. KEY BACKGROUND FACTS**

### **A. Stanly County**

Stanly County is one of 115 public school districts in North Carolina and is in the South Central part of the state in a rural area. It is comprised of 23 schools with 9,231 students of which 88% qualified for free and reduced meals for FY 2011. The District is situated in a former textile dependent county and has suffered enrollment decline as a result of the eroding economy. This decline has caused the District to suffer financially and some reduction in the number of schools in the District is currently planned.

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<sup>3</sup> *In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Canon-Mc Millan School District et al.*, Order, 23 FCC Rcd 15555 (Telecom. Access Pol. Div. 2008) (“*Canon-McMillan Order*”).



**B. Stanly County and The E-Rate Program**

Stanly started participating in the E-Rate Program in 1998 and has always handled its E-Rate affairs in a responsible and careful manner. The District normally sought E-Rate reimbursements using the Service Provider Invoice (“SPI”) methodology for Priority 1 and 2 services and as such had no experience with the Billed Entity Applicant Reimbursement (“BEAR”) methodology. Stanly County employed an E-Rate consultant to manage the application process, but not its reimbursement process. The responsibility for the E-Rate Program reimbursement process rested solely with the District’s IT Director, among various other responsibilities.

**C. The FY 2011 Form 471s and Funding Commitment**

Stanly submitted the FCC Form 471 containing FRN 2182233 on March 17, 2011 and received a Funding Commitment Decision Letter on October 11, 2013, which contained a last date to deliver service of September 30, 2014 and an invoicing deadline of January 28, 2015. The District then filed a SPIN change request as the original service provider closed his business and another was selected to assume the contract. The SPIN change was approved on December 18, 2013. In the meantime the new service provider was performing other non-E-Rate eligible work for the District. Due to the new service provider being unfamiliar with the desire of the District to have their invoices discounted in accordance with the SPI process the service provider billed the District for both the non-E-Rate and E-Rate eligible services and the District paid the bills in their entirety, including the \$345,992.18 for which it seeks approval to invoice USAC.

**D. The Invoicing Process**

The District, through its IT Director, then intended to seek reimbursement by filing a (BEAR) Form 472, but the IT Director, whose responsibility it was to file the Form 472, unexpectedly became ill a month before the January 28, 2015 invoicing deadline and several days before the deadline his situation turned to extremely critical and thus he was unable to return to work

and submit the Form 472 (BEAR) reimbursement form in a timely manner. Stanly County is similar to many other small rural school districts in that only one person has direct responsibility for ensuring E-Rate reimbursements are obtained and that one person has numerous other duties and responsibilities. Ultimately the IT Director was unable to return to work at all and it was not until his replacement was hired in August of 2016 that the fact that the BEAR Form had not been filed was discovered.

**E. The Stanly Request For Waiver**

On January 20, 2016, less than 12 months after the invoicing deadline, Stanly County filed the Request for waiver of that deadline to allow the District to submit an invoice. The Request urged that the Commission find that “extraordinary circumstances” (i.e., the IT Director’s unexpected and serious illness) warranted the less-than 12 month delay.

**F. The FCC’s Denial Of The Request**

The Notice listed the Appeal as “Denied” under “Invoice Deadline Extension Requests,” citing the case of *Ada School District et al.*” for the proposition that failure to show extraordinary circumstances that would justify waiving the requirement that invoice extension requests be filed before the invoicing deadline.<sup>4</sup>

**III. PETITION FOR RECONSIDERATION STANDARDS**

Stanly respectfully submits that the School has satisfied the requirements of Section 1.106(b)(2) of the Commission’s rules regarding Petitions For Reconsideration. It is adversely affected by the denial of its Request by the Notice. In any case, it is in the public interest for the Commission

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<sup>4</sup> *In the Matter of Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.*, 31 FCC Rcd 3834 (Telecom. Access Pol. Div. 2016) (“*ADA Case*”).

to consider those arguments.<sup>5</sup> The Petition is timely filed in accordance with the Notice and Section 1.4 of the Commission's Rules.

#### IV. ARGUMENT

##### A. The Commission Should Not Have Applied The Extraordinary Circumstances Standard

In its 2014 *E-Rate Modernization Order*<sup>6</sup> the Commission codified its rules concerning invoice extension deadline waivers. Effective for Funding Year 2014, the codified rules permitted USAC to grant a single one time, 120-day extension of the invoicing deadline so long as the request was made before the expiration date.<sup>7</sup> USAC was not authorized to grant any other extensions. With respect to waivers of the invoicing deadline by the Wireline Competition Bureau, the Commission instructed the Bureau that it should grant waivers only "in extraordinary circumstances."<sup>8</sup> Neither the *E-Rate Modernization Order* nor the relevant FCC rule codification defined the term "extraordinary circumstances."

With respect to "appeals or requests to USAC or the Commission seeking permission to submit invoices after USAC's invoicing deadline for earlier funding years [i.e., Funding Years prior to Funding Year 2014]," the Commission directed USAC and the Bureau to consider "whether such requests were made in good faith and within a reasonable time period after the services were provided or whether extraordinary circumstances exist that support such a request."<sup>9</sup> The Stanly County FRN at issue relates to Funding Year 2011. However, the Commission went on to say that the extraordinary

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<sup>5</sup> See 47 C.F.R. §1.106(b)(2).

<sup>6</sup> *Modernizing the E-Rate Program for Schools and Libraries*, Order and Further Notice of Proposed Rulemaking, 29 FCC 8870, 8971 (2014) ("*E-Rate Modernization Order*")

<sup>7</sup> *Id.*, ¶¶ 238, 240; 47 C.F.R. §54.514.

<sup>8</sup> *E-Rate Modernization Order*, ¶ 240.

<sup>9</sup> *Id.*, ¶242.



circumstances standard should apply to “any requests or appeals seeking an invoicing deadline extension of more than 12 months after the last date to invoice.”<sup>10</sup>

The Bureau applied and clarified this standard in the subsequent *Hancock Library* decision.<sup>11</sup> Therein, the Bureau noted that “all of the petitioners seek to file invoices that were more than 12 months late at the time the petitioners first sought invoice deadline extensions.”<sup>12</sup> It states further that “with respect to requests that were filed more than 12 months after USAC’s invoice extension, we find that the petitioners have not demonstrated ‘extraordinary circumstances’ that would justify filing invoice extension requests more than a year late.”<sup>13</sup>

The Stanly County waiver request here was filed on January 20, 2016 - less than 12 months after the expiration of the invoice deadline. Therefore, the extraordinary circumstances standard should not have been applied. Rather, the Commission should have looked at whether the waiver request was made in good faith and within a reasonable time period after the services were provided, applying the *Canon-McMillan School District* decision.<sup>14</sup> Therein, the Commission did consider a variety of factors, including the fact that “these applicants missed a procedural deadline and did not violate a substantive rule.”<sup>15</sup> Moreover, the Bureau found that “denying the request would create undue hardship” and that “there was no evidence that the petitioners engaged in activity to defraud or abuse the E-Rate program.”<sup>16</sup> The District’s inability to recover over \$300,000 in approved E-Rate support

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<sup>10</sup> *Id.*

<sup>11</sup> *In the Matter of Requests for Waiver or Review of Decisions of the Universal Service Administrator by Hancock County Library System et al.* Order, 30 FCC Rcd 4723 (Telecom. Access Pol. Div. 2015) (“*Hancock Order*”).

<sup>12</sup> *Id.*, ¶ 9 (emphasis supplied).

<sup>13</sup> *Id.* (emphasis supplied).

<sup>14</sup> *Canon-McMillan Order*, *supra*.

<sup>15</sup> *Id.*, ¶ 8, citing the Commission’s *Bishop Perry Order*.

<sup>16</sup> *Id.*

would work a hardship on this small rural school district. Thus, Stanly County's situation reflects the same circumstances considered in the *Cannon-McMillan Order* and warrants grant of the request.

**B. The Circumstances Involved Should Be Considered Extraordinary.**

Even if an extraordinary circumstances standard were to apply, Stanly County respectfully submits that the situation here – an unexpected and very serious illness of the sole person responsible for E-Rate application reimbursements at a small rural school district – should be considered to meet that undefined standard. This was not a planned medical absence (e.g., medical leave) or a situation where the IT Director's absence related to a family medical emergency, as opposed to his own. Moreover, initially at least he planned to return to work, but was ultimately unable to do so. Stanly County respectfully submits that it would better serve the public interest to waive the rule in this circumstance than to impose the penalty of strict adherence.<sup>17</sup>

**V. CONCLUSION AND REQUEST FOR RELIEF**

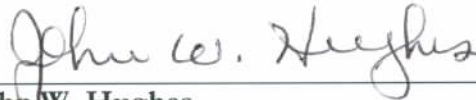
For the foregoing reasons, the Commission should reconsider the denial of Stanly's Request for waiver of the invoicing deadline and allow the invoices totaling \$345,992 to be filed. The Commission originally applied the wrong standard in assessing the Request and good cause warrants the grant thereof. Even if the undefined extraordinary circumstances standard were to be applied, it has been met.

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<sup>17</sup> Stanly County submits that failure to allow potential reimbursement for approved E-Rate funds under these circumstances should be distinguished from the late-filed appeals at issue in the St. Lucy School decision (*In the Matter of Request for Review of the Decision of the Universal Service Administrator by St. Lucy School*, Order, 18 FCC Rcd 1792 (Telecom. Access Pol. Div. 2003)).

Respectfully submitted

**Stanly County School District**

A handwritten signature in dark ink, reading "John W. Hughes", is written over a horizontal line.

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**Consultant to Stanly County School District**

Dated: June 29, 2016

Dated: January 20, 2016



### **SUMMARY**

This request relates to a waiver of the rules to allow for an extension of the date to file an invoice deadline extension for Stanly County School District (Stanly or District), a public school district in North Carolina, relating to Priority 1 services for Funding Year ("FY") 2011.

Stanly's IT Director, at the time surrounding the invoice deadline, was critically ill and hospitalized and through no fault of the IT Director or the District, the FCC Form 472 (BEAR) was not submitted in a timely manner.

It is our belief that the reason for the failure of the District to timely file the FCC Form 472 qualifies as "extraordinary circumstances" and in this case justifies a waiver of the rule to allow for an extension of the time to file. Additionally, there is no evidence of any intent to defraud or abuse the E-Rate Program. Denying the District the ability to recover these already expended funds, which were properly expended in accordance with USAC's approval, would only work a hardship on the District and under the circumstances would not serve the fundamental purposes of the E-Rate Program.

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Albemarle, North Carolina	)	FRN 2182233)
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Further this request for a waiver of the rules is submitted directly to the Bureau in accordance with Paragraph 252 of the Order which directs “parties seeking only a waiver of our rules are not governed by this requirement [to first submit requests to USAC], but instead must seek relief directly from the Commission or the Bureau.”

## **I. STATEMENT OF THE SCHOOL'S INTEREST IN THE REQUEST**

Stanly has standing to file this Request because Paragraph 252 of the Order directs “parties seeking only a waiver of our rules are not governed by this requirement [to first submit requests to USAC], but instead must seek relief directly from the Commission or the Bureau.”

## **II. KEY BACKGROUND FACTS**

### **A. Stanly County School District**

Stanly County School District is one of 115 public school districts in North Carolina and is in the South Central part of the state. It is comprised of 23 schools with 9,231 students of which 55% qualify for free and reduced meals. The District is situated in a former textile dependent county and has suffered enrollment decline as a result of the eroding economy. This decline has caused the District to suffer financially and some reduction in the number of schools is currently being debated.

### **B. Stanly and the E-Rate Program**

Stanly started participating in the E-Rate Program in 1998 and has always handled its E-Rate affairs in a responsible and careful manner. The District normally seeks E-Rate reimbursements using the BEAR methodology for Priority 1 services and SPI methodology for Priority 2 services.

### **C. The FY 2011 Form 471s and Funding Commitment**

Stanly submitted the FCC Form 471 containing FRN 2182233 on March 17, 2011 and received a Funding Commitment Decision Letter on October 11, 2013 which contained a last date to deliver service of September 30, 2014 and an invoicing deadline of January 28, 2015 (see attached Form 471 and FCDL). The District then filed a SPIN change request as the

service provider closed his business and another was selected to assume the contract (see attached SPIN change request). The SPIN change was approved on December 18, 2013. In the meantime the new service provider was performing other non-E-Rate eligible work for the District. Due to the new service provider being unfamiliar with the desire of the District to have their invoices discounted the service provider billed the District for both the non-E-Rate and E-Rate eligible services and the District paid the bills in their entirety.

The District then intended to seek reimbursement by filing a (BEAR) Form 472, but the IT Director whose responsibility it was to file the Form 472 became ill a month before the deadline and was absent from work for an extended period of time. It was not until well after the invoicing deadline that the fact that the (BEAR) Form 472 had not been filed was discovered.

### III. ARGUMENT

#### A. The reason for the failure of the Form 471 (BEAR) not being filed by the invoicing deadline of January 28, 2015 should qualify as an extraordinary circumstance as defined in the "Order"

Paragraph 242 of the Report and Order and Further Notice of Proposed Rulemaking (the "Order") adopted July 11, 2014 by the FCC specifically states "With respect to ...requests to....the Commission seeking permission to submit invoices after USAC's invoicing deadline for earlier funding years, we direct the ....Bureau to consider....whether other extraordinary circumstances exist that supports such a request." We contend that absence caused by a prolonged illness of the person responsible for completing the Form 472 would qualify as an "extraordinary circumstance".

Additionally the Commission's rules allow for the waiver of a Commission rule "for good cause shown."<sup>1</sup> The FCC has articulated the following guidance for determining whether a waiver is appropriate:

<sup>1</sup> 47 C.F.R. § 1.3.



A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>2</sup>

In granting such waivers, the Commission has noted that, like the situation with Stanly, those responsible for understanding and complying with the E-Rate Program rules at individual schools or small school districts are not federal grants program experts. On more than one occasion the Commission has granted waivers for good cause, noting that:

[T]he primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts. Even when a school official has learned how to correctly navigate the application process, unexpected illnesses or other family emergencies can result in the only official who knows the process being unavailable to complete the application on time.... Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants.<sup>1</sup>

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<sup>2</sup> *Requests for Review of Decisions of the Universal Service Administrator by Richmond County School District*, Order, 21 FCC Red 6570, 6572, <J[5 (2006) (internal references omitted) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972)).

<sup>3</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, Order, 21 FCC Red 5316, 5323, <J[14 (2006); see also *Request for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science*, Order, 25 FCC Red 9256, 9260, <J[9 (2010); *Request for Waiver of Decisions of the Universal Service Administrator by Children of Peace School*, Order, 25 FCC Red 5492, 5495- 96, <J[7 (Wireline Compet. Bur. 2010); *Request for Review of Decision of the Universal Service Administrator by Hazelwood School District*, Order, 24 FCC Red 12698, 12700, <J[5 (Telecom. Access Policy Div. 2009).

Stanly is a smaller school district with a declining enrollment and a small IT staff. There were no resources for a dedicated full-time E-Rate staff person. Such limited staffing and resources have also been noted as grounds for waiver of the Commission's rules in certain circumstances.<sup>23</sup>

#### **IV. CONCLUSION AND REQUEST FOR RELIEF**

Stanly has always made a good faith effort to comply with the USAC rules and guidelines. There is no evidence of waste, fraud, or abuse, or failure to comply with the core program requirements. The fact that the responsible person for completing the Form 472 (BEAR) was absent due to illness for an extended time which covered the invoicing deadline for this FRN should qualify as an “extraordinary circumstance” according to the Order. Imposing a penalty of the inability of Stanly to recoup the already extended expenses of this approved project would work a distinct hardship and the resulting inequities here would not support that action. Stanly respectfully submits for all the foregoing reasons that the invoicing deadline be extended so that it be allowed to submit the invoice relative to this FRN and accordingly be reimbursed for the already approved expense.

Respectfully submitted,

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*Consultant to Stanly County School District*

## CERTIFICATE OF SERVICE

I, John W. Hughes, certify on this 29th day of June, 2016, a copy of the foregoing "Petition For Reconsideration" has been served via electronic mail or first class mail, postage pre-paid, to the following:

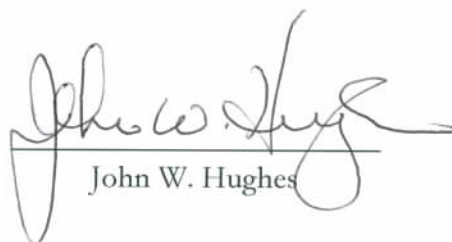
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